SUMMIT CO. (M) SDN. BHD.

v.

NIKKO PRODUCTS (M) SDN. BHD.

FEDERAL COURT, KUALA LUMPUR
SALLEH ABAS LP
WAN SULEIMAN FJ
GEORGE SEAH FJ
[CIVIL APPEAL NO. 311 OF 1983]
22 SEPTEMBER 1984

COMPANY LAW: *Service of writ at registered address of company - Change of address - Registrar of Companies notified - Writ left at old address - Effective date of change of address - Whether date of lodgement or date of registration.*

The appellants sought to effect service of a writ on 1 July 1982 by leaving a copy of it at No. 42-2A City Tower, Jalan Alor, Kuala Lumpur, which the appellants believed to be the registered address of the respondent company. Unknown to the appellants the respondents had changed the situation of its registered office on 8 February 1982. The respondents had however duly notified the Registrar of Companies of the change on 20 February 1982.

The appellants, having left a copy of the writ at No. 42-2A and no appearance having been entered by respondents, moved the Court for and entered judgment in default. Following this the respondents' land was attached. On coming to know of the writ, the respondents took out a summons to set aside the writ on the grounds that they had not been served.

The learned trial Judge held that leaving a copy of the writ at No. 42-2A City Tower was no good service and set aside the judgment. He was of the view that the effective date of change of address of the registered office, was when the actual change was made and not on the day of the lodgement of the notice. The appellants appealed.

Held:

The effective date of change of address, is the date of the lodgement of the s. 120 notice to the Registrar and not the date of registration.

[Appeal dismissed with costs.]

Cases referred to:

P.T. Pelajaran Nasional Indonesia v. Joo Seang & Co. Ltd. [1958] 24 MLJ 113
Kwong Kum Sun Chan Glass Merchant v. Ahong Construction Co. (Malaya) Ltd. [1968] 1 MLJ 28

Legislation referred to:

Companies Act 1965, ss. 119, 120
Companies Act 1948 (UK), s. 9(3)
European Communities Act 1972 (UK), s. 9(4).

Other source referred to:

Modern Company Law, L.C.B. Gower 4th Edn. para. 312 Footnote 23 and pp. 499, 500.

For the appellants - Mathias Chang Wen Chieh; M/s. Suhaimi Khor Zulkifli & Chang
For the respondents - Wong Ngee Heong; M/s. Low & Lee

JUDGMENT

Wan Suleiman FJ:

The appellants sought to effect service of a writ pursuant to O. 62 r. 4(1) (a) on 1 July 1982 by leaving a copy of it at No. 42-2A City Tower, Jalan Alor, Kuala Lumpur, which the appellants believed to be the registered address of the respondent company. Unknown to the appellants respondents had changed the situation of its registered office from the aforementioned address to Room 1201, 12th Floor Komplek Selangor on 8 February 1982. In accordance with the requirements of s. 120 of the Companies Act respondents had duly notified the Registrar of Companies of the change by lodging with the Registrar on 20 February 1982 the requisite Form 44 in which the particulars of the change of registered office had been set out. This notification of change was not entered into the register, according to the Registrar's letter annexed as an exhibit to the affidavit of appellant's solicitor, until some 7 months later i.e., on 24 September 1982.

It is not clear whether there was indeed a register maintained by the Registrar of Companies into which is entered the particulars from the Form 44 which respondents have sent him or whether as the learned trial Judge conjectured, the alleged "registration" was merely emplacement as an enclosure in a file pertaining to the respondent company.

To proceed with the facts, appellants, having left a copy of the writ at No. 42-2A, no appearance having been entered by respondents, moved the Court for and entered judgment in default for the amount claimed. Execution proceedings then followed and land belonging to the respondent company was attached. It was then, according to respondents, that they came to know of the writ. They then took out a summons to set aside the writ on the grounds that they had not been served.

Section 119 of the Companies Act requires a company to have a registered office within Malaysia to which all communications and notices may be addressed. Section 120 provides for the Registrar to be notified of the situation of registered office and of any change of the situation of such office within one month of the incorporation of the company or such change, as the case may be.

The learned trial Judge took the view that the change of situation of the registered office took effect from the day that the actual change was made, and not on the day of the lodgement of the notice required by s. 120, (since that can take up to one month after the actual change), and also not on the date of the registration of such notice, if indeed registration had taken place. He therefore held that leaving a copy of the writ at No. 42-2A City Tower was no good service and set aside the judgment.

In England notice of change in the situation of the office must be given to the Registrar of Companies within fourteen days under the 1948 Companies Act, 1972 s. 9(3). A third party without actual knowledge is not affected unless the notice is published within 15 days of the change, and even within the 15 days, is not affected if he is unavoidably prevented from knowing of the change (European Communities Act, 1972. s. 9(4)). (See **Modern Company Law** by LCB. Gower, 4th Edn., p. 312, Footnote 23 and pp. 499, 500).

Having drawn our attention to the English statute law, counsel for appellants submitted that the effective date of change of address would be the date of registration, perhaps by analogy with the English requirement for gazetting.

Such stringent requirements governing change of situation of registered office of companies may perhaps have been dictated by the United Kingdom's entry into the larger European Community and the need to facilitate dealings between firms in U.K. and those of other E.E.C. countries.

Two authorities were cited to us which are not quite helpful, because the facts therein are materially different.

In *P.T. Pelajaran Nasional Indonesia v. Joo Seang & Co. Ltd.* [1958] 24 MLJ 113 the plaintiffs had served the writ at the wrong address because of misinformation from the Registrar of Companies, who had registered the change of address by the defendants over two years earlier.

In *Kwong Kum Sun Chan Glass Merchant v. Ahong Construction Co. (Malaya) Ltd.* [1968] 1 MLJ 28, the defendants had moved, leaving a notice at the main door of the old premises regarding the change of address but the writ was served within the period of one month he had under s. 120 of the Companies Act 1965 to notify the Registrar, no such notification having yet been sent.

Mr. Wong for the respondents maintains that the date of the lodgement of the s. 120 notice to the Registrar should be the effective date. We are inclined to agree with him. Whether the particulars are in due course (and as in this case very much later), entered into any register, is in our view irrelevant. Once the notice of change under s. 120 has been lodged, anyone who wishes to ensure that a writ is served at the proper address can on payment of the prescribed fee avail himself of his right under s. 11(2) (a) of the Act to "inspect any document filed or lodged with the Registrar"

We would therefore dismiss the appeal with costs.

Also found at [1983] 1 CLJ 70